

GENERAL ORDER

FAIRFAX COUNTY POLICE DEPARTMENT



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| SUBJECT: MOBILE IN-VEHICLE VIDEO PROGRAM | NUMBER: 430.8 |
| CANCELS ORDER DATED: 1-1-04 | ISSUE DATE 1-1-09 |

I. PURPOSE

The purpose of this document is to establish specific procedures pertaining to the Department's Mobile In-Vehicle Video program (MVR) and to establish the responsibilities of all employees who use this equipment.

II. BACKGROUND

The Fairfax County Police Department is committed to developing mutual trust and respect between citizens and the Police Department. The use of MVR recording systems is one tool this Department has implemented to help promote and encourage this trust and respect.

Mobile video/audio recording (MVR) equipment has been acquired by many police departments throughout the country, and it has been demonstrated to be a valuable tool for collecting and reporting evidence and reducing citizen complaints and civil litigation. It enhances training through real-life incident recordings and acts as an objective measurement of determining officer performance. This technology should assist the agency in meeting its goals by establishing a strong standard of accountability to the citizens who live in, work in, or travel through Fairfax County.

III. POLICY

It is the policy of the Fairfax County Police Department that the MVR equipment shall be used only as set forth in this General Order.

IV. TERMINOLOGY

In-use tape: A tape currently in use by an officer. This tape shall be secured in the station after each tour.

In-use tape storage: The location designated by station command for the short-term storage of in use tapes. This location shall be secured, yet accessible to officers.

Long-term tape storage: The location designated by station command for long-term

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storage of completed tapes. This location shall be secure and only accessible to the station commander, assistant commander, or supervisory personnel.

Tape inventory log: The log sheet used to document the distribution and chain of custody of a tape.

V. TRAINING

All employees shall be trained prior to using any portion of the MVR equipment. The training shall be conducted by trained station personnel designated by station command. A standard lesson plan will be developed and submitted to the Criminal Justice Academy. All training shall comply with this standard lesson plan. Documentation of this training shall be forwarded to the Criminal Justice Academy for inclusion in the employee's training record.

VI. OPERATING PROCEDURES – OFFICER RESPONSIBILITIES

A. General Operating Instructions and Guidelines

Officers operating vehicles with MVR equipment are responsible for the condition of the equipment. Officers shall select or be assigned cruisers with operational MVRs whenever available. All officers shall conduct a pre-shift inspection of all MVR equipment. This includes the MVR recording box in the trunk, the camera, the microphone in the cruiser, the body microphone, and the videotape.

During the pre-shift inspection, officers shall use the microphone to record their name, date, and time. This will help ensure the proper identification of the tape and operability of the equipment. It is also the responsibility of each officer to ensure the body microphone is securely attached to their uniform in a place where their voice and the voices of citizens are easily recorded. It is recommended the microphones be worn on the upper chest or shoulder area of the uniform. The body microphones have clips for attachment to the uniform. There is also a wire antenna which must be secured inside the officer's uniform shirt.

In the event there is any damage or irregularity discovered during this

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inspection, it shall immediately be brought to the attention of a supervisor and repairs will be coordinated with the station resource officer. Officers shall not utilize cruisers equipped with defective MVR equipment or cruisers without MVR equipment without supervisory approval. If such approval is granted, this shall be documented on the squad lineup by the supervisor.

The MVR equipment starts recording automatically when emergency lights are activated, when an officer presses a button on the overhead mounted camera, or when an officer presses the button on his/her wireless body microphone.

The latter two methods can override the "off" switch and activate the recorder. The wireless body microphone switch can turn the recorder on or off outside the cruiser up to a distance of 1000 feet (this distance may be reduced by physical structures such as buildings or dense foliage). The camera can swivel 360 degrees to record events in the back seat or outside the cruiser. There is also a microphone wired in the passenger portion of the cruiser.

All MVR equipment is the property of the Fairfax County Police Department and, as such, falls under Regulation 206.1, Title to Equipment/Care and Maintenance. Officers shall not attempt to alter any part of the device, the microphone, or MVR tape. This includes the altering, copying, or erasing of any videotape.

The duplication of MVR tapes for training purposes, for official police related duties, or for court presentation is permissible with the approval of the station commander. To ensure the integrity and quality of the tape, copies should be made by the Criminal Investigations Bureau, Special Investigations Unit or the Criminal Justice Academy, Video Unit. However, if circumstances necessitate immediate duplication, other copying equipment may be used. Requests for copying tapes should be made well in advance of the date needed.

- B. The following procedures shall be adhered to when using the MVR:
1. Officers, prior to the start of their shift, shall load their MVR tape secured from the squad supervisor into their assigned cruiser. At the end of their shift officers shall return their MVR tape(s) to the squad

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supervisor for storage in the squad's in-use tape storage location. Each officer, prior to the start of their shift, shall inspect their issued MVR tape to ensure it has enough storage capacity for their shift. If necessary, the officer shall carry one blank MVR tape to accommodate the possible MVR tape shortage.

2. Officers shall utilize the MVR equipment on all traffic stops. The recording will remain on for the duration of the traffic stop. This includes the video and audio segments of the equipment. MVR equipment may be deactivated only after the traffic stop has ended and the violator and/or officer have left the scene.
3. Officers shall utilize the MVR equipment to record the duration of all vehicular pursuits. All officers involved in a pursuit shall operate their MVR equipment. All MVR equipment will remain activated until the pursuit is terminated or until the completion of any arrest.
4. Officers shall utilize the MVR equipment during all emergency responses to any complaint or backup.
5. Officers shall record (at least the audio) any prisoner transport when the prisoner:
 - a. Is argumentative or combative.
 - b. Has been involved in a use of force against the officer.
 - c. Is injured or claims to be injured.
 - d. Is attempting to injure him/herself.
6. If asked by any citizen, suspect, or arrested individual, officers shall advise them that the MVR equipment is in use, unless doing so would hamper the investigation. Officers should also consider mentioning MVR equipment is in use during any citizen contact if they feel doing so may dissuade inappropriate citizen behavior.
7. Officers shall utilize the MVR equipment during any traffic stop where an officer asks for a consent search of either a person or a vehicle.

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8. At no time shall an officer use the MVR equipment for other than official police business. No video/audio recording shall take place inside any police facility or during courtroom proceedings.
 9. At no time shall any officer use the MVR equipment to record any portion of an administrative investigation.
- C. Officers are encouraged to use their MVR equipment:
1. To record the reason for their current or planned enforcement action, such as DWI enforcement.
 2. To record any domestic violence cases. This is especially important when officers are inside the residence of someone and have legal standing to be there.
 3. To record the actions of suspects/prisoners if the recording would prove useful in later judicial proceedings. Examples of this would include interviews, sobriety performance tests and, as stated above, during custody and transport of prisoners.
 4. When following a vehicle (suspected DWI or a vehicle matching the description of a criminal violation) to establish reasonable suspicion for future court use. In this case, the manual override should be used to activate the recorder without the use of the emergency equipment. This is important during the time an officer is pacing a vehicle and wants to remain unnoticed.
 5. When field interviews and citizen contacts occur where there is a reasonable suspicion of a crime or possible confiscation of evidence or contraband. In this case, the audio portion of the recording may be practical.
 6. During all citizen ride-a-longs. Officers are encouraged to explain and demonstrate the use of the MVR equipment. This will help educate the public and would be beneficial to the Department's community policing initiatives.

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7. Officers are encouraged to use the MVR equipment when conducting stakeouts or other covert operations where they can utilize the equipment to record possible criminal or suspicious activities. The zoom capability of the equipment can particularly be helpful in this activity.
8. Officers should inform their supervisors of any video/audio-taped sequences that may be valuable for training purposes. The Criminal Justice Academy will provide a main point of contact for the collection of these tapes.
9. Officers shall also advise their supervisor of any video/audio-taped incidents that they suspect may be of value during the investigation of a citizen complaint.

VII. SUPERVISORY RESPONSIBILITIES

Supervisors shall be responsible for ensuring that all personnel under their command adhere to this policy.

- A. Each squad shall be assigned a locked location in which to store their in-use tapes.
- B. Supervisors shall distribute tapes to officers at the beginning of each shift. The tape number (see Section XI) and officer's name shall be included on the spine of the tape. The tape number shall also be included on the squad line-up. Supervisors shall also collect the distributed tapes from their staff at the conclusion of their shift. When officers have used an entire tape, they will return the tape to their supervisor and receive a new tape. The supervisor will then update the Tape Inventory Log (see attachment #1) and secure the tape in the long-term storage location.
- C. Supervisors shall ensure that each member of their squad has a tape prior to their shift. In the event that an officer is operating a cruiser without the MVR equipment, this shall be documented on the daily line-up. When officers are working any assignment where they are not in an MVR equipped vehicle, it shall also be noted.

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- D. When the station tape inventory becomes low, the supervisor shall notify the station resource officer. The station resource officer will coordinate the tape purchase with the station's commander.
- E. Supervisors will be issued a trunk vault key. Additionally, a trunk vault key may be placed on each cruiser key ring to accommodate officers loading their own tapes. Supervisors will not be required to install and remove tapes from cruisers prior to or at the end of each shift. Officers can install and remove their own tapes.
- F. It shall be the responsibility of each supervisor to document any damage or irregularity to any part of MVR equipment. As with any property of the Fairfax County Police Department, if an administrative investigation is warranted, then rules governing administrative investigations shall be applied. Any reported damage shall be forwarded to the MVR Coordinator who will coordinate the necessary repairs with the Technical Services Bureau.
- G. Supervisors shall establish an auditing procedure where they review their staff's videotapes for the purposes of gathering information that may be useful in preparing employee evaluations or establishing training needs. This audit, at a minimum, should occur bi-monthly. If a supervisor wishes to make a copy of a tape for training purposes, approval will be requested from station command. Any tape copied for training purposes will also be forwarded to the Criminal Justice Academy for inclusion in their training files.
- H. Supervisors shall establish a procedure to periodically review their staff's MVR systems to include microphones and video tapes to ensure they are in proper functioning order. At a minimum, this should occur during the monthly station cruiser inspections.

VIII. COMMANDERS' RESPONSIBILITIES

Station commanders are responsible for ensuring that all personnel under their command adhere to the provisions of this policy. They shall ensure all personnel are trained in the use of the MVR equipment. Commanders shall also ensure two storage locations (in-use storage & long-term storage) are available for storing videotapes. Additionally, commanders shall ensure completed tape inventory logs are maintained at the station.

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Station commanders will have the authority to authorize the copying of videotapes. It shall be the goal of the MVR program to minimize the number of tapes which are copied. All video/audio recordings shall be treated as potential evidence.

Tapes or copies of tapes are releasable under a Subpoena Duces Tecum or when ordered as part of the discovery rules of evidence. In certain circumstances, tapes may also be releasable under the Virginia Freedom of Information Act. All tapes/copies of tapes will be subject to command review prior to any release outside of the Department. Furthermore, when a tape is copied, only the segment of tape necessary will be released.

Station commanders shall ensure that at no time will an employee release any footage of any tape, external to this agency, unless it is under a court order or with prior approval of any of the following individuals:

- District station commander or assistant commander
- Patrol Bureau commanders
- Deputy Chief for Patrol
- Commander of Internal Affairs Bureau
- Director of Public Information Office
- Chief of Police, or his designee

IX. LEGAL CONTROL AND MANAGEMENT

One of the most important aspects of these tapes is their use in criminal proceedings. The videotapes are a valuable tool for the Department and the Commonwealth's Attorney's Office in prosecuting criminal and traffic cases. However, there are significant issues which must be followed to ensure the admissibility of these recordings in court testimony. The following policy must be adhered to at all times to assure the successful admission of tapes for prosecution.

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- A. All tapes shall be subject to the requirements for the admissibility of evidence.
- B. Officers intending to use any tape in court should advise the Commonwealth's Attorney's Office in advance of the initial court date. This will also apply for tapes introduced during preliminary hearings or discovery motions.
- C. Officers intending on using any tape shall note the tape number, date, and time of the event or arrest. Officers should document all incidents and arrests in any case report or arrest documentation. Since the tapes will be filed numerically, the officers will not only have the date and time of the arrest they will have the tape number. This will ensure easier retrieval of the tape when the court date arrives.
- D. The Commonwealth's Attorney's Office has provided the following opinion on several issues concerning the usage and admissibility of tapes for court purposes. These are as follows:
 - 1. The Commonwealth's Attorney's Office advises that an officer must authenticate the video/audio as an accurate depiction of what transpired during the incident.
 - 2. Under Best Evidence Rules, the Commonwealth's Attorney's Office advised there is no case law which prevents the translation of material on video/audio tape to compact disk or other formats. The critical aspect is that officers be able to authenticate information contained and reviewed by the court as an accurate depiction of the events.
 - 3. If needed for court testimony, officers need to have tapes and all notes available during any court proceedings. Hopefully, this will reduce the need to continue the cases.
 - 4. There is no law prohibiting officers from recording citizens in public. Individuals in a public area have no expectation of privacy. Audio recording of any police contact with individuals is allowed in a private residence, provided that the officers have legal standing to be in that location (i.e. domestic violence cases).

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X. CONDUCT OF ADMINISTRATIVE INVESTIGATIONS

- A. Any time there is a complaint of officer misconduct, the on-duty supervisor should immediately pull the tape of the date in question. The supervisor should then review the tape and proceed as they would in any allegation of misconduct.
- B. At no time shall any officer let a complainant review any portion of the tape without the prior approval of a supervisor. The supervisor, when warranted and during the course of their official duties, may review the tape with a complainant/citizen.
- C. Whenever an audio/video recording is used during the course of an internal investigation, its use shall be documented as part of the investigation and the information forwarded to the Internal Affairs Bureau. This includes incidents where the complaint is disproved without the need for a full investigation (i.e. PD206/207). When a tape is used by the Internal Affairs Bureau during an administrative investigation, a copy of the section of tape needed will be made by IAB. The original tape will then be returned to the appropriate district commander for long-term storage.
- D. At no time shall any officer use the MVR equipment to record any portion of an administrative investigation.

XI. TAPE PURCHASE AND DISTRIBUTION

Eight-hour professional grade tapes should be purchased for use, unless they are unavailable. This will reduce the overall quantity of tapes that will require long term storage.

Blank tapes will be stored in an accessible location chosen by station commanders. When a tape is distributed to an officer for use, the Tape Inventory Log shall be filled out. The tape number shall be written on the tape sticker for tracking purposes. The tape number will consist of the Julian date, the district station number, and the officer's name. For example, a tape issued on August 30, 2003 from the Mason Station would read (03245-4-Officer's name).

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XII. STORAGE AND RETENTION

Two storage locations shall be established at each district station. The first location shall be secured by lock and key, accessible to officers; similar to a property room. This location will be used for the temporary storage of tapes, which are currently in-use by officers. The second location shall also be secured by lock and key and will be used for long-term storage of tapes that are full and no longer in-use. Access to this storage location shall be limited to the station commander, assistant commander, and supervisory personnel.

When any tape is removed or checked out by anyone from long-term or in-use storage, other than for daily usage, the Tape Inventory Log shall be completed by a supervisor.

The tapes will be stored/retained at the station under the direction of the station commander for a period of three years after the last recording. Per the County Attorney's Office, this three-year time period will allow sufficient time for any possible legal inquiry after an incident. In addition, the three-year time period is consistent with the Code of Virginia, which states that law enforcement agencies must follow the Library of Virginia's record retention schedules.

When the three-year period expires, tapes shall be degaussed and discarded. This task shall be accomplished by personnel designated by the station commander. The tape destruction shall be documented on the Tape Inventory Log.

The station coordinator should be the liaison officer between station supervisors and the station commander who has overall responsibility of purchasing tapes. All issues regarding the maintenance and replacement of the MVR equipment shall be routed through the Technical Services Bureau.

XIII. LEGAL REFERENCE

Library of Virginia- Records Retention Schedule

XIV. ACCREDITATION STANDARDS REFERENCE

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ADM.
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This General Order becomes effective January 1, 2009 and rescinds all previous General Orders pertaining to the subject.

ISSUED BY:

APPROVED BY:

A handwritten signature in cursive script, appearing to read "D. M. Robe", written over a horizontal line.

Chief of Police

A handwritten signature in cursive script, appearing to read "Atty. Gen.", written over a horizontal line.

County Executive